

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

HARVEY LEE FREMONT, JR., and
JOHN DAVIDSON,

Defendants.

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8:06CR133

MEMORANDUM AND ORDER

This matter is before the court on defendant John Davidson's appeal, Filing No. 27, of the order of the United States Magistrate Judge ("magistrate"), Filing No. 26, denying Davidson's motion to sever Counts I and II of the Indictment and to sever defendants' trials, Filing No. 18. Davidson and Freemont are both charged with burglary, in violation of 18 U.S.C. § 1153 and Neb. Rev. Stat. § 28-507 in Count II of the Indictment. In Count I of the Indictment, Freemont is charged with manslaughter while operating a motor vehicle under the influence of alcohol, in violation of 18 U.S.C. §§ 1153 and 1112. The charges involve an alleged burglary followed by a high speed chase which resulted in the death of one of the alleged burglars.

Under 28 U.S.C. § 636(b)(1)(A), a magistrate can hear and determine nondispositive matters. See NECrimR 57.1(a)(9) (magistrate may hear and determine motions to sever). A decision of the magistrate on a motion to sever can be reviewed by the district court, but will not be modified or set aside unless clearly erroneous or contrary to law. NECrimR 57.2(c).

The magistrate found that the separate charges involve the same series of events and further found that an instruction cautioning the jury to give separate consideration to

each defendant and each charge would obviate any danger of prejudice to defendant Davidson. The court agrees with the magistrate's assessment that a jury will be able to compartmentalize the evidence. *See Zafiro v. United States*, 506 U.S. 534, 537 (1993) (noting preference for a joint trial when defendants are indicted together). Defendant Davidson has not shown that the magistrate's finding is either clearly erroneous or contrary to law. Accordingly,

IT IS ORDERED that defendant Davidson's appeal, Filing No. 27, of the magistrate's order, Filing No. 26, denying his motion to sever, Filing No. 18, is denied.

DATED this 20th day of July, 2006.

BY THE COURT:

s/ Joseph F. Bataillon
JOSEPH F. BATAILLON
United States District Judge